

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Don Ray Whitehurst,	)	C/A No. 4:09-1699-JFA-TER
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
State of South Carolina; County of	)	
Spartanburg; Spartanburg County Sheriff's	)	
Department; and Spartanburg County	)	
Detention Center,	)	
	)	
Defendants.	)	
_____	)	

The *pro se* plaintiff, Don Whitehurst, brings this action pursuant to 42 U.S.C. § 1983. He originally brought this action in the Court of Common Pleas for Spartanburg County where the court appointed counsel for him. The defendant then removed the case to this court. The plaintiff claims constitutional violations as a result of defendants' alleged medical indifference and excessive force.

The Magistrate Judge assigned to this action<sup>1</sup> has prepared a Report and Recommendation wherein he suggests that this action should be dismissed for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. In addition, the

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<sup>1</sup> The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).


Magistrate Judge has considered the Fourth Circuit's four-prong test<sup>2</sup> in determining his recommendation that the action should be dismissed. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The plaintiff was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on November 30, 2009. However, the plaintiff did not file any objections to the Report within the time limits prescribed. Additionally, the court's order advising the plaintiff of the importance of responding to the defendants' motion to dismiss was not responded to by the plaintiff.

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation proper and incorporated herein by reference. Accordingly, this action is dismissed for failure to prosecute under Rule 41(b) and all outstanding motions are deemed moot.

IT IS SO ORDERED.

December 16, 2009  
Columbia, South Carolina



Joseph F. Anderson, Jr.  
United States District Judge

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<sup>2</sup> See *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4<sup>th</sup> Cir. 1982).